IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 461 OF 2006

Rajashre Vijay Salunke .. Applicant.
vs.
Vijay Dashrath Salunke (Deshmukh)
& Ors. ... .. Respondents.

Mr. S.V. Marne for Applicant.
Ms. M.M. Deshmukh, APP. for Respondents.

Coram: J.N. PATEL &,

A.A. SAYED, JJ.

Date: 14TH JUNE, 2007.

ORAL JUDGEMENT (Per J.N. Patel, J.)

. The Applicant wife is the original Applicant No.1 who filed Petition E. No. 254/2003 before the Family Court, Pune for claiming maintenance for herself and her two daughters Nayan and Pragati. It was the case of the applicant that the parties were married on 13.5.2001 and out of the wedlock two daughters are born. The first daughter was born on 9.5.2002 and the second daughter was born on 11.8.2003. It is her case that initially for a period of six months she was treated well by her husband and thereafter she was treated with cruelty. She was required to work in the field and was not provided with proper meals. It is the case of the applicant that the attitude of the husband and in-laws changed when she could not give birth to a son and she has further alleged that the

respondent-husband has performed second marriage with Gauri daughter of Balkrishna Nivrutti Yerande of village Maldevwadi, Bhuinj, Taluka Wai, Dist. Satara and, therefore, she was driven out of her house with a demand for a sum of Rs. 1 lac and has been forced to reside with her parents. She being unable to maintain herself, filed this application.

2. It is submitted that the applicant has been able to establish that the respondent has sufficient means in the form of 20 Acres of agricultural land, buffaloes and the father-in-law of the applicant was the Chairman of the Milk Dairy and, therefore, she may be awarded maintenance at the rate of Rs. 1500/- per month for herself and for her two daughters. The learned Family Court by the impugned judgment rejected her claim for maintenance but found that the two minor daughters were entitled to maintenance at the rate of Rs. 1200/- per month each.

3. The learned counsel appearing for the applicant submitted that the learned Judge of the Family Court has not considered the evidence on record and has merely denied maintenance to the applicant wife on the ground that she has not proved by leading evidence of relatives that her husband refused to maintain her in spite of the fact that she tried to resume co-habitation and, therefore, in absence of such evidence she is not entitled for maintenance. It is,

therefore, submitted by the learned counsel for the applicant that the fact that the applicant and her children are residing together and have been denied maintenance by the husband who is capable of maintaining them stands established by her evidence before the Court and the Court granting maintenance of Rs. 1200/- per month in favour of the children but denying the same to the applicant wife.

4. It is submitted that the respondent-husband in order to create the defence after the application for maintenance was filed by the wife, filed a petition for restitution of conjugal rights and immediately on decision on the said application, withdrew the petition which also reflects on his conduct that he has not desirous to maintain the applicant wife.

5. It is submitted that even if it is accepted that the applicant-wife could not prove that the respondent-husband has married for second time, but the very fact that the applicant-wife was treated with cruelty and forced to leave the matrimonial home and was not granted maintenance, entitles her for maintenance.

6. We have read the evidence of the applicant-wife as a whole. It sufficiently establishes that she has been treated with cruelty and forced to reside separately. The Evidence Act does not require number

of witnesses to prove a fact. It is the quality of evidence and not the quantity which is to be weighed while deciding an issue. In this case the learned Family Judge rather proceeded on an erroneous assumption that merely because the wife has failed to examine her relatives with whom she tried to approach, the respondent-husband by itself does not falsify the evidence of the applicant-wife. We, therefore, find that the learned Judge of the Family Court was not correct in rejecting the application of the wife for maintenance. In so far as the children are concerned, they are already awarded maintenance in the sum of Rs. 1200/- each. Taking this into consideration and the fact that the husband has sufficient means to provide maintenance to the wife and considering the general level of prices and the basic necessities of life which are required to be provided for her maintenance i.e. food, shelter, clothing and medical treatment, Rs. 1500/- per month would be just and proper by way of maintenance to the applicant-wife. Therefore, the impugned judgment is quashed and set aside in so far as it denies to the applicant-wife maintenance and the respondent-husband is directed to pay a sum of Rs. 1500/- per month to the applicant-wife from the date of the filing of the application.

7. The revision application is allowed with costs. Rule is made absolutely accordingly.

(J.N. Patel, J.)

(A.A. Sayed, J.)